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International Foam Packaging, LLC and Chantha Peou. Case 05–CA–098746

October 31, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge and a first amended charge filed by Chantha Peou on February 19 and April 30, 2013, respectively, the Acting General Counsel issued a complaint on May 16, 2013, against International Foam Packaging, LLC, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent filed an answer and an amended answer to the complaint. However, on July 30, 2013, the Respondent withdrew its answer.

On August 2, 2013, the Acting General Counsel filed a Motion for Default Judgment with the Board. On August 6, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by May 30, 2013, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer and an amended answer on May 28 and July 22, 2013, respectively, it subsequently withdrew its answers by email dated July 30, 2013. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹ Accord-

ingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Virginia limited liability company with an office and place of business in Henrico, Virginia, and has been engaged in the manufacture and distribution of protective packaging materials.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Henrico, Virginia facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Christy Allport	Office Manager
Mike Girard	Facilities Manager
Joseph Sullivan	President

On about August 22 through 24, 2012, the Respondent's employees Chantha Peou and Sonny Phak engaged in concerted activities with other employees for the purposes of mutual aid and protection by engaging in a work stoppage concerning terms and conditions of employment.

On about August 27, 2012, the Respondent discharged Peou and Phak.

On about August 27, 2012, the Respondent required Peou and Phak to reapply for their former positions.

Since about August 27, 2012, the Respondent refused to reinstate Peou to his former position.

The Respondent engaged in the conduct described above because the named employees engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

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CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by discharging Chantha Peou and Sonny Phak, requiring Peou and Phak to reapply for their former positions, and refusing to reinstate Peou, all because Peou and Phak engaged in protected concerted activities and to discourage employees from engaging in these or other concerted activities, we shall order the Respondent to offer Peou full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, we shall order the Respondent to make Peou and Phak whole for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, we shall order the Respondent to compensate Peou and Phak for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for Peou and Phak.

Finally, the Respondent shall also be required to remove from its files any and all references to the unlawful discharges of Peou and Phak, the unlawful requirement that they reapply for their former jobs, and the unlawful failure to reinstate Peou, and to notify Peou and Phak in writing that this has been done and that the unlawful conduct will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, International Foam Packaging, LLC, Henri-

co, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in protected concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

(b) Requiring employees to reapply for their former jobs because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

(c) Failing and refusing to reinstate employees because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Chantha Peou full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Chantha Peou and Sonny Phak whole for any loss of earnings and other benefits suffered by them as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate Peou and Phak for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for Peou and Phak.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Peou and Phak, the unlawful requirement that Peou and Phak reapply for their former jobs, and the unlawful failure to reinstate Peou and, within 3 days thereafter, notify them in writing that this has been done and that its unlawful conduct will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

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necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Henrico, Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 27, 2012.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 2013

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against employees because they engage in protected concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

WE WILL NOT require employees to reapply for their former jobs because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage them from engaging in concerted activities.

WE WILL NOT fail and refuse to reinstate employees because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Chantha Peou full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Chantha Peou and Sonny Phak whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, less any net interim earnings, plus interest.

WE WILL compensate Chantha Peou and Sonny Phak for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the

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backpay awards to the appropriate calendar quarters for Peou and Phak.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharges of Chantha Peou and Sonny Phak, the unlawful requirement that Peou and Phak reapply for

their former jobs, and the unlawful failure to reinstate Peou, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

INTERNATIONAL FOAM PACKAGING, LLC